

FILED
Superior Court of California
County of Los Angeles

APR 09 2018

Sherri R. Carter, Executive Officer/Clerk
By Jenny D. Truong Deputy

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Attorneys for Defendant
ALPHA STRUCTURAL, INC. sued as DOE 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DIVISION

DAVID A. GLAZER, an individual,

Plaintiff,

v.

CHENEY ADRIENNE SHAPIRO;
CHENEY SHAPIRO DESIGNS 401K;
CHENEY SHAPIRO DESIGNS;
RESOURCEFUL DEVELOPMENTS,
INC.; RICHARD JUDSON WILLIAMS;
SILVERWOOD PROPERTIES, INC.;
KENNETH HOWARD SHAPIRO;
PODLEY ASSOCIATES REALTORS;
LINDA DARLINGTON SEYFFERT;
SEISMIC SAFETY, INC.; EDMUND J.
SYLVIS; KEN LAMARR COMPTON;
ALPHA STRUCTURAL, INC. sued as
DOE 2; AND DOES 3 THROUGH 250,

Defendants.

CASE NO. BC669741

DECLARATION OF GREGORY C.
PYFROM, SR., ESQ. (COUNSEL TO
DEFENDANT ALPHA STRUCTURAL,
INC., SERVED AS "DOE #2" IN
PLAINTIFF'S FIRST AMENDED
COMPLAINT) RE GOOD FAITH ATTEMPT
TO MEET AND CONFER WITH
PLAINTIFF PRIOR TO FILING
DEMURRER AND MOTION TO STRIKE
TO FIRST AMENDED COMPLAINT;
AUTOMATIC 30-DAY EXTENSION OF
TIME TO RESPOND

[Code of Civil Procedure §430.41]

Filed in Advance of Filing Demurrer and/or
Motion to Strike to Plaintiffs' First Amended
Complaint

AND CROSS-RELATED ACTION.

TO THE COURT AND ALL PARTIES BY AND THROUGH THEIR COUNSEL
OF RECORD:

DECLARATION OF GREGORY C. PYFROM, SR., ESQ.

1 I, GREGORY C. PYFROM, SR., Esq. do declare as follows:

2 1. I am an attorney at law duly licensed to practice law in the Courts of the State of
3 California since 1976. I am counsel for the Defendant, Alpha Structural, Inc who was sued as
4 DOE 2 in this case. If called to testify as to the facts contained herein whether learned
5 individually or told to by other parties or lawyers in this case, I could accurately do so.

6 2. I submit this declaration to the Court along with the provisions of *Code of Civil*
7 *Procedure* §430.41 requiring counsel for a demurring party to meet and confer in person or by
8 telephone with the party who filed the pleading that is subject to the demurrer, etc. More
9 specifically, *Code of Civil Procedure* §430.41 provides the demurring party "...shall be
10 granted an automatic 30-day extension of time within which to file a responsive pleading, by
11 filing and serving, on or before the date on which the demurrer would be due, a declaration
12 under penalty of perjury that a good faith attempt to meet and confer was made and
13 explaining the reasons why the parties could not meet and confer."

14 3. In this matter, Plaintiff is David A. Glazer, is an individual ("Plaintiff"),
15 represented by the Law Office of Ronald Hartmann and Kurt Kananen located in West Lake
16 Village, California and the Law Offices of Timothy R. Lee located in Beverly Hills,
17 California. Plaintiff has filed two (2) complaints (an Original Complaint and Plaintiff's FAC).
18 Defendant Alpha Structural, Inc. was not named in either of the two complaints. Plaintiff's
19 FAC was filed on November 8, 2017. Defendant Alpha Structural, Inc. was served with a "doe
20 amendment" and named as DOE #2, about 3+ weeks ago. At this point, Alpha's time to meet
21 and confer will expire in a matter of days.

22 4. Upon being served and making an appointment with this office, discussions
23 have taken place, including one meeting which was to discuss dismissing defendant Alpha
24 Structural, Inc. The protected settlement meeting occurred at counsel for plaintiff's, Hartmann
25 & Kananen's conference room. No discussions as to anything other than a dismissal with
26 prejudice or a dismissal per tolling agreement were discussed with Plaintiff's counsel at that
27 time. My client's representatives were present. It was the consensus of all three (3) of us that
28 defendant Alpha Structural, Inc. was going to be dismissed from this case. The involvement of

1 my client was not directly connected with the issues of this case.

2 5. Factually, Alpha Structural, Inc. ("Alpha") was asked by defendants, Cheney
3 Adrienne Shapiro dba Cheney Shapiro Design 401K (purchaser who intended to do a fix and
4 flip of the property) ("Shapiro") to conduct a limited, non-invasive structural engineering
5 inspection of a limited portion of the foundation during Shapiro's escrow to purchase this
6 property. This limited visual inspection, without invasive testing, revealed a number of
7 structural problems with that part of the foundation of that home. Obviously, a full and
8 comprehensive inspection was not possible based upon the inability of the inspector to conduct
9 a thorough inspection. The home did not belong to Shapiro. This was a minimal foundation
10 inspection for a minor fee. After making the limited structural inspection of the foundation and
11 limited report, time past and the escrow closed. The next notice as to this limited structural
12 inspection of this home was about 4 years later when Alpha was served with a Doe #2
13 Amendment to Plaintiff's FAC.

14 6. It appears that the buyer of this property was defendant Shapiro along with other
15 parties including: (1) Resourceful Developments, Inc., (2) Richard Judson Williams
16 (contractor), (3) Silverwood Properties, Inc, (4) Kenneth Howard Shapiro (Realtor), (5) Podley
17 Associates Realtors, (6) Linda Darlington Seyffert (Realtor), (7) Edmund J. Sylvis, (8) Ken
18 Lamarr Compton, etc. along with other defendants

19 7. After the close of the escrow, defendant, Shapiro, contracted for the repairs,
20 remodeling and later sale of the property through her father, defendant, Kenneth Howard
21 Shapiro ("K.H. Shapiro"). A sale soon followed, and escrow opened. During the period from
22 the close of escrow to the sale of the home (before it fell out of escrow), new experts were
23 retained including a structural engineer who wrote a report. Whether that report was the reason
24 the buyer of the property stopped the escrow is not known. What is known is that the home was
25 put back on the market, a new buyer made an acceptable offer and the last buyer's structural
26 engineering report was given to the new buyer, not the limited structural engineer report of
27 Alpha, my client. That escrow closes, almost three (3) years pass, and the original lawsuit is
28

1 filed by Plaintiff. From the completion of the Alpha structural engineering report to this time,
2 more than 3 years have passed.

3 8. Alpha was unaware of the events taking place and had no contact with anyone
4 else associated with this project following the one, minimal inspection set forth above. The next
5 notice was by the service on Alpha as DOE #2 on the FAC.

6 9. Following being sued, time passed before my office was contacted. I reached
7 out to Mr. Hartmann, Esq., one of plaintiffs' attorneys, to discuss the basis of Alpha being
8 served noting that four (4) years are approaching, Alpha has not been named in two (2) separate
9 complaints, etc. Initially, the thrust of the issue discussed with plaintiff's counsel Hartmann
10 concerned the lack of insurance coverage for the Glazer's losses. It appears, although certainly
11 not confirmed, that Defendant, Chaney A. Shapiro and Richard J. Williams, had no insurance
12 coverage. The Realtors claimed no culpability and there was a fear that no insurance would be
13 present. As such, questions were posed as to the pre-existing relationship with Defendant,
14 Cheney A. Shapiro, Resourceful Development, Richard J. Williams but none existed. Alpha
15 demanded a dismissal.

16 10. The parties agreed to commence a series of settlement negotiations by having
17 knowledgeable parties appear and discuss settlement issues including the dismissal of Alpha
18 under a settlement conference discussion which took over one hour. At the end of the
19 discussions and not stating what additional issues arose due to the pending privilege, Alpha's
20 principals and I believed that Alpha would be dismissed either directly or by entering into a
21 tolling of the statute of limitations by written agreement.

22 11. Time passed and a short time ago, a discussion between Hartmann, counsel for
23 Glazer and I took place. That discussion ended with notice that Alpha would not be dismissed
24 leaving little time for counsel for Alpha to now review the complaint, to properly meet and
25 confer with counsel for plaintiff prior to the filing of Alpha's demurrer, motion to strike, or
26 both with my heavy calendar currently pending.

27 12. At the end of this last week and having returned from multiple meetings,
28 hearings, etc., phone calls were placed with Mr. Hartmann seeking to meet and confer

1 regarding Plaintiff's FAC. A voicemail message was left. After that, the same phone call was
2 made to Mr. Kananen with a voicemail message being left.

3 13. My schedule, due to office and private issues, left no time to meet and confer.
4 Over the weekend, therefore, I sent emails to Mr. Hartmann and Mr. Kananen on this issue. I
5 stated due to the lack of time to now discuss certain irregularities in the FAC, I would be filing
6 with the court under CCP §431.41 in order to obtain 30 days to meet and confer with counsels
7 for plaintiff before filing of Alpha's demurrer. This is that CCP §431.41 request.

8 14. The Court should note that dispositive causes of action, if not all of them may
9 assist counsel for plaintiff in reconsidering their position to move forward against Alpha. If no
10 progress is made within the next 30 days, a demurrer, motion to strike or both may be filed on
11 behalf of Alpha.

12 15. This document will be filed with the Court early Monday, April 9th. My next
13 week is very busy with a visit to a home in Ramona, California, a probable meeting in Irvine,
14 California, a tentative meeting with an expert in San Luis Obispo, as well as large cases in San
15 Rafael, California. The last day to file my demurrer is within four (4) days. In that time and
16 with the sheer volume of information being sent to this office from other parties, there is no
17 way I can be fully be prepared to speak to all the issues contained within this FAC, with fifteen
18 (15) causes of action, fifteen (15) parties, and one hundred fifty seven (157) paragraphs of
19 plaintiff's FAC in three (3) days and still have time for a meaningful meet and confer.

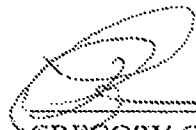
20 16. It is now Sunday, April 8, 2018. My client, Alpha, and I have concerns that a
21 default against my client could be may be taken very soon by plaintiff. In an abundance of
22 caution, I am filing this notice with the Court pursuant to *Code of Civil Procedure* §430.41
23 which requires me to state under penalty of perjury that a good faith attempt to meet and confer
24 was made and explaining the reasons why the parties could not meet and confer more than five
25 (5) days before the demurrer would be filed, since that time period has already run. I am
26 further informed that *Code of Civil Procedure* §430.41 provides the demurring party "shall be
27 granted an automatic 30-day extension of time within which to file a responsive pleading, by
28 filing and serving, on or before the date on which a demurrer would be due, a declaration

1 *stating under penalty of perjury that a good faith attempt to meet and confer was made and*
2 *explaining the reasons why the parties could not meet and confer."*

3 17. Again, in an abundance of caution and to protect my client, Alpha, I must file
4 this document immediately with the Court to protect my client's position in this case. I will
5 further attempt to communicate in order to meet and confer with counsel for plaintiffs and all
6 other parties knowing that I have not been given the names of those law firms even after all this
7 time. I have also not been given the ADR and related documents standardly issued with a new
8 complaint. I learned of a CMC later this week through my office since no such document was
9 received by me from plaintiff. Once I learn of the names of all parties, a copy of this document
10 will be sent to them also.

11 18. If called as a witness I would testify competently thereto of those things within
12 my personal knowledge and state the additional information and its source.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. This declaration was executed on this 9th day of April, 2018,
15 2017 at Burbank, California.

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GREGORY C. PYFROM, SR., Declarant

PROOF OF SERVICE

Glazer v. Cheney Adrienne Shapiro, et al.
Los Angeles County Superior Court Case No. BC669741

I am over the age of 18 years, residing or employed in Los Angeles County, California, am readily familiar with the business practice for collection and processing of correspondence for mailing within the United States Postal Service, and not a party to the within action; my business address is 2315 W. Burbank Blvd., Burbank, CA 91506.

On the date shown below, I served the foregoing documents described as:
DECLARATION OF GREGORY C. PYFROM, SR., ESQ. (COUNSEL TO DEFENDANT ALPHA STRUCTURAL, INC., SERVED AS "DOE #2" IN PLAINTIFF'S FIRST AMENDED COMPLAINT) RE GOOD FAITH ATTEMPT TO MEET AND CONFER WITH PLAINTIFF PRIOR TO FILING DEMURRER AND MOTION TO STRIKE TO FIRST AMENDED COMPLAINT; AUTOMATIC 30-DAY EXTENSION OF TIME TO RESPOND as to attempt to Meet and Confer on the interested parties in this action through their attorneys of record by placing a true and correct copy thereof, addressed as follows:

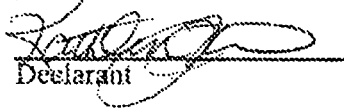
X **VIA FIRST CLASS MAIL** [Code Civ. Proc. §1012, et seq.] I deposited said document(s) into the out box for U.S. Mail pick-up at Burbank, California, in a sealed envelope with postage fully prepaid. The firm's practice is to collect and process mail on the same day as shown on this declaration. Under that practice, all correspondence is deposited with the United States Postal Service on the same day that it is placed for collection and processing, in the ordinary course of business.

VIA FEDERAL EXPRESS [Code Civ. Proc. §1013]. I prepared a Fedex envelope(s), properly labeled, and caused it to be deposited into a Federal Express pick-up receptacle as per the regular practice of this firm.

VIA HAND DELIVERY [Code Civ. Proc. §1011]. I prepare an envelope(s), properly labeled, and caused the same to be hand delivered to each addressee(s) noted on the Service List attached.

VIA FACSIMILE [Code Civ. Proc. §1013]. I caused the said document(s) to be transmitted by facsimile machine to the number(s) indicated after the addressee(s) noted on the Service List attached. I received written confirmation that the facsimile transmission was received by the addressee(s).

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 9, 2018, at Burbank, California.


Declarant

SERVICE LIST

Glazer v. Cheney Adrienne Shapiro, et al.
 Los Angeles County Superior Court Case No. BC669741

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